

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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MARITAL RAPE AND THE NEED FOR LEGAL RECOGNITION

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ABSTRACT

Marital rape is still one of the most debated and least recognized types of gender-based violence in India. In spite of its severe effect on the physical, emotional, and psychological health of women, it is still not included in the definition of rape under Indian law because of Section 63 of the Bharatiya Nyaya Sanhita, which shields husbands from prosecution for non-consensual sex within marriage. This research paper critically assesses the pressing necessity of law reform to recognize marital rape in India using a doctrinal methodology, scrutinizing the loopholes in the existing law, the constitutional aspects under Articles 14, 19, and 21, and the incompatibility of the exception of marital rape with international human rights obligations. The article also assesses comparative jurisprudence of nations like the UK, USA, Australia, and South Africa, which have criminalized marital rape and established the principle of ensuring consent in all sexual relations, be they intimate or otherwise. The human rights and psychological aspects are examined to bring out the effects on victims, as well as legal reforms brought about by different Law Commissions and civil society entities. The paper concludes by providing pragmatic suggestions for legislative reform, victim assistance, and sensitization to provide justice, equality, and human dignity for married women in India.

Keywords: Marital Rape, *Bharatiya Nyaya Sanhita*, Constitutional Rights, Gender Justice, Legal Reform

1. INTRODUCTION

Marital rape is a highly sensitive and contentious issue that has been a subject of legal, social, and cultural controversy in India for a long time. While rape as a crime is universally recognized and condemned, the institution of marital rape, or where one spouse coerces the other into sexual intercourse under the cover of marriage, is yet to be recognized under Indian law. Even though marital rape has been widely recognized as a severe infringement on an individual's human rights globally, Indian law still maintains that a husband cannot be charged

with raping his wife, according to the legal exception under Section 63 of the Bharatiya Nyaya Sanhita (BNS). This exception has resulted in a complicated and controversial debate regarding the nature of marriage, consent, and changing perceptions of women's rights in the context of Indian society.¹

The exception to marital rape in Indian law has its roots in ancient thoughts on marriage, where the woman was legally the property of her husband. These ancient ideas, which were strongly ingrained in patriarchy and traditional gender, continue to shape the understanding of marital relationship in modern India. Despite the fact that the Indian Constitution provides equal protection under the law and equal rights, the legal system has been reluctant to acknowledge marital rape as a criminal offense. This is further complicated by the fact that there is intense cultural and social conditioning in India that believes subordinating women is the norm in marriage. The belief that a woman owes sexual intimacy to her husband, even without her consent, is still rooted very deeply in much of Indian society.¹

At the center of the controversy lies the issue of consent, a key concept at the center of criminalizing rape. Consent in a legal definition is the knowing, voluntary, and clear expression of agreement to have sexual contact. Yet within marriage, this idea of consent has traditionally taken a backseat to the proposition that marriage means consent. This is a big hurdle to overcome in tackling marital rape since most people view a wife, by definition, as having agreed to sexual intercourse at all times. This has contributed to an overall understanding that it is not possible for a husband to rape his wife. Such sentiments not only portray outmoded societal assumptions but also contradict the basic human rights of women, including their right to control their bodies and to live in freedom from violence and coercion.² Over the past couple of years, though, marital rape has raised considerable attention back in India and across the international community. Lobbying groups, human rights networks, and activists for women's rights have pressed for the exemption of marital rape from the BNS on grounds that it runs contrary to universal fundamental rights to life, liberty, and dignity as enshrined in the Constitution. The problem has emerged as an integral part of the larger national debate on gender equality, women's empowerment, and safeguarding women against any kind of violence. A string of high-profile court cases has been brought to Indian courts with a plea

¹ Harshita Gupta and Kavya Agrawal, "Beyond Sacred Vows: The Case for Criminalising Marital Rape" *available at*: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4965736 (last visited April 11, 2025).

² "A critical analysis of the standard of consent in rape law in India", Oñati Socio-Legal Series *available at*: <https://opo.iisj.net/index.php/osls/article/view/1647/1992> (last visited April 11, 2025).

seeking recognition of marital rape as an offense punishable under law and alteration of the law in accordance.¹

Regardless of these attempts, the legal landscape continues to be polarized. While some would contend that criminalizing marital rape would destabilize the institution of marriage and open the door to abuse of law, others are of the view that the failure to recognize it perpetuates violence based on gender and institutionalizes discrimination. The judiciary, hitherto, has been shy of dealing with this matter holistically, and the Indian Parliament continues to remain indecisive about enacting legislation that criminalizes marital rape. In the absence of legal recognition, victims of marital rape are left without proper recourse, further entrenching the stigma and silence surrounding this form of violence.

Understanding Marital Rape

Marital rape means involuntary sexual intercourse by a husband with his wife without her consent or against her will. It is a sexual violation of a woman's basic rights such as the right to bodily autonomy, dignity, and liberty. In spite of the gravity of its nature, Indian criminal law still does not bring marital rape under the ambit of rape as per Section 63 of the Bharatiya Nyaya Sanhita, 2023. The major setback is Section 63, as it defines "sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, as not being rape." This very provision of the law amounts to legalizing enforced sexual intercourse through marriage and withholds from women the right of refusing consent even after marriage.³ This exception is premised on archaic colonial-era assumptions that once a woman enters marriage, she grants irrevocable and implied consent to sex with her husband. This assumption abrogates the principle that consent has to be ongoing and withdrawable at any time, irrespective of the nature of the relationship. Section 64 of the BNS, which prescribes punishment for rape, equally does not mention or cover marital rape in its scope. Consequently, a wedded woman who has been subjected to sexual violence by her husband cannot claim redress under criminal law for the crime of rape and thereby leaves a gap in the law and denies her full protection under the law.¹ Though the Protection of Women from Domestic Violence Act, 2005 (PWDVA) does mention "sexual abuse" as domestic violence, it neither defines rape nor offers criminal penalties for marital rape. The redresses under the PWDVA are civil in character and provide for protection orders, residence orders, and money relief but are

³ "Challenge to the Marital Rape Exception," Supreme Court Observer, 2023 available at: <https://www.scobserver.in/cases/challenge-to-the-marital-rape-exception/> (last visited April 11, 2025).

insufficient to penalize the offense of forced sexual intercourse. Therefore, a wife who is raped by her husband has to resort to civil justice instead of criminal prosecution, thus diluting the deterrent power of the law and enabling the offender to remain unpunished.

This legal lacuna is directly contrary to the rights guaranteed under the Constitution of India. Article 14 ensures equality before the law and equal protection of the laws, whereas Article 15 forbids discrimination based on sex. Of greater importance, Article 21 ensures the right to life and personal liberty, which has been interpreted judicially to comprise the right to live with dignity, bodily integrity, and privacy. The marital rape exception transgresses these constitutional provisions in that it erects an arbitrary and discriminatory classification between unmarried and married women by denying married women equal protection of the law.

Objectives of the Study

1. To examine the legal status of marital rape under Indian criminal law.
2. To evaluate the constitutional implications of the marital rape exception.
3. To study the effectiveness and limitations of civil remedies under the Protection of Women from Domestic Violence Act, 2005.
4. To propose legal reforms for the criminalization of marital rape in India.

Research Methodology

The current study uses a doctrinal research methodology, and this entails a qualitative examination of current legal statutes, constitutional provisions, educational writings, and judicial analyses pertinent to marital rape in India. The study is based on secondary sources, which are books, legal commentaries, journal articles, and statutory sources like the Bharatiya Nyaya Sanhita, 2023, the Constitution of India, and the Protection of Women from Domestic Violence Act, 2005. Based on the analysis and explanation of legal texts and principles, this approach enables an elaborate understanding of the legal position of marital rape and the necessity of its criminalization in the Indian legal framework.

Related works

Nigam, S. (2015).⁴ This paper by Shalu Nigam critically explores the paradox of marital rape in India, focusing on how structural inequalities perpetuate gender-based violence within marriage. Nigam argues that while marital rape is a serious violation of women's rights, its legal non-recognition reflects deep-rooted patriarchal values. The paper assesses how societal attitudes towards marriage, gender roles, and family laws contribute to the legal invisibility of marital rape, which further marginalizes victims. Nigam advocates for a shift in both legal and societal frameworks to ensure that women's bodily autonomy is recognized, thereby ensuring justice for victims of marital rape.

Woolley, M. L. (2007).¹ This article by M.L. Woolley examines the unique nature of marital rape, which combines elements of both domestic violence and non-marital rape. Woolley emphasizes that the legal and social responses to marital rape are often more complex due to the intimate and personal nature of marriage. The article discusses the challenges faced by legal systems in addressing marital rape and the overlapping issues of control, coercion, and violence within marriages. Woolley suggests that effective legal reforms must acknowledge the complexities of marital relationships while ensuring that victims have access to justice.

Gupta, B., & Gupta, M. (2013).⁵ In this article, B. Gupta and M. Gupta analyze the current legal framework surrounding marital rape in India. They critically evaluate Section 375 of the Indian Penal Code, which excludes marital rape from its definition, and discuss the legal and social implications of this exception. The authors advocate for legal reforms to criminalize marital rape, pointing out that the exclusion creates a paradox in the Indian justice system, where a woman's right to bodily autonomy is limited by her marital status. They suggest that reforms in both law and societal attitudes are necessary to protect women's rights and dignity within marriage.

Mandal, S. (2014).¹ S. Mandal's article delves into the ideological and legal contestations

⁴ Nigam, S. (2015). The social and legal paradox relating to marital rape in India: addressing structural inequalities.

available at SSRN 2613447. https://www.researchgate.net/profile/Shalu-Nigam/publication/314516963_The_Social_and_Legal_Paradox_Relating_to_Marital_Rape_in_India_Addressing_Structural_Inequalities/links/632ad17d0a708521500d1924/The-Social-and-Legal-Paradox-Relating-to-Marital-Rape-in-India-Addressing-Structural-Inequalities.pdf

⁵ Gupta, B., & Gupta, M. (2013). Marital rape: current legal framework in India and the need for change. *Galgotias Journal of Legal Studies*, 1(1), 16-32. <https://www.galgotiasuniversity.edu.in/pdfs/issue2.pdf>

surrounding the concept of marital rape in India. Mandal argues that marriage, often viewed as a sacred institution, complicates the recognition of marital rape as a crime. The article critiques the legal framework that perpetuates the notion of marital rights over a woman's body, and examines the impact of such views on women's autonomy. Mandal discusses how cultural perceptions of marriage, sex, and violence in India contribute to the continued invisibility of marital rape within both the legal system and society at large.

Kadyan, S., & Unnithan, N. P. (2023).⁶ In their article, S. Kadyan and N.P. Unnithan provide a critical analysis of the ongoing issue of non-criminalization of marital rape in India. They explore the historical, cultural, and legal factors that have allowed the marital rape exception to persist in the Indian Penal Code. The authors discuss the implications of this legal gap on women's rights and advocate for comprehensive legal reforms to criminalize marital rape. They also analyze the political and social resistance to such reforms, highlighting the need for broader societal change to recognize marital rape as a serious violation of women's human rights.

2. LEGAL FRAMEWORK IN INDIA

Overview of *Bharatiya Nyaya Sanhita* Provisions

The *Bharatiya Nyaya Sanhita*, 2023 (BNS) is the main criminal code in India and enumerates different offences and their punishments, including the offence of rape. Section 63 of the BNS enumerates the offence of rape and states certain situations under which sexual intercourse by a man with a woman amounts to rape. These conditions comprise absence of consent, coercion, fraud, intoxication, unsoundness of mind, and age of the victim. The clause specifically brings forth that the consent has to be free and willing, and if such consent is not there, then the act is made criminal under Section 64, which stipulates punishment for rape.¹

Yet, this law has an important exception in the guise of Section 63. The exception reads that sexual intercourse by a man with his own wife who is not fifteen years of age shall not constitute rape. What this does is create blanket immunity for husbands in effect making adultery and rape not crimes. Although Section 64 mandates severe imprisonment for a period not less than ten years for rape, it is not applicable when the offender is the husband and the

⁶ Kadyan, S., & Unnithan, N. P. (2023). The Continuing Non-Criminalization of Marital Rape in India: A Critical Analysis. *Women & Criminal Justice*, 1-14. <https://www.tandfonline.com/doi/abs/10.1080/08974454.2023.2228790>

victim is his wife who is fifteen years or above.

The BNS does cover some sexual offences in marriage under specific situations. For example, Section 64B was enacted to criminalize sexual intercourse by a husband during judicial separation without the consent of the wife. Nonetheless, this is made applicable only where the couple has been ordered legally separated and is not applicable to wives residing with their husbands. This restricted exemption does not realize the reality of marital sexual abuse that pervades the lives of innumerable women in India.

In addition, provisions like Section 498A of the BNS address cruelty on the part of the husband or his family, including mental and physical abuse. Although this section can be invoked where there is domestic violence, it does not directly address nor criminalize the forced sexual intercourse within marriage. This gap in the criminal law encourages a culture of impunity and violates the bodily autonomy and dignity of married women.

Section 63: The Marital Rape Exception

Section 63 of the BNS is the central legal provision that excludes marital rape from being a criminal offence in India. This exception is based on the outdated belief that marriage constitutes irrevocable sexual consent, thus treating the wife as the husband's property and not as an independent individual with the right to make choices about her own body. The legal assumption underlying this exception is inherently flawed since it takes away the right of married women to withdraw consent and protection against sexual violence in marriage.⁷

This legal exception essentially divides the crime of rape into two categories — one for all women except married women with regard to their husbands. It also goes against the legal conception of consent and bodily integrity. In contemporary jurisprudence, consent is accepted as the cornerstone of any sexual relationship, and it has to be freely given, spontaneous, and revocable at any time. The marital rape exception, then, contradicts both legal reasonableness and current human rights norms.

This law provision, in addition, has been criticized for undermining women's rights to equality and non-discrimination. The categorization made by the exception is arbitrary and devoid of

⁷ The Hindu Bureau, "Supreme Court defers hearing pleas seeking criminalisation of marital rape" The Hindu, 22 October 2024.

any rationale. It presupposes that marriage gives a husband permanent sexual rights over his wife, which is not in accordance with the gender justice and equality principles enshrined in the Constitution of India. Section 63 essentially excludes married women from the protective scheme of rape laws and deprives them of equal access to justice.

Constitutional Aspects: Article 14, 19, and 21

The exception of marital rape also raises stringent constitutional issues, especially in the light of Articles 14, 19, and 21 of the Constitution of India. Article 14 ensures equality before the law and equal protection of the laws. By distinguishing between married and unmarried women on the issue of sexual violence, the exception offends the rule of equality and gives rise to a discriminatory classification that lacks any reasonable nexus to a legitimate goal.¹

Article 15 also supports this stance by outlawing discrimination on the basis of sex. The marital rape exception discriminates against women by withholding legal protection from them on the sole basis of their marital status. This discrimination is further exacerbated by the fact that there is no such exemption for men; therefore, it continues to perpetuate gender-based violence and reinforces patriarchal power relations in marriage.

Article 21 of the Constitution entitles the right to life and personal liberty and encompasses the right to live with dignity, the right to bodily integrity, and the right to sexual autonomy. Forcely compelled sexual intercourse within marriage qualifies as a blatant contravention of these rights. The exception of marital rape erodes the autonomy of a woman over her body and dispenses with the right to give consent, and thus contravenes the very essence of Article 21. In addition, Article 19(1)(a), guaranteeing the freedom of speech and expression, also includes the right to express will and individual autonomy. Denial of legal status to marital rape limits a woman from expressing negation and exercising control over her own body, thus infringing upon her freedom:⁸

Provision	Content	Impact on Marital Rape
Article 14 (Constitution)	Equality before law	Violated by differential treatment of married women

⁸ Manupatra, “Articles – Manupatra” available at: <https://articles.manupatra.com/article-details/Marital-Rape-and-Law> (last visited April 11, 2025).

Article (Constitution)	15	Prohibits discrimination on sex	Marital rape exception is inherently discriminatory
Article (Constitution)	19(1)(a)	Freedom of expression and autonomy	Impeded by denial of right to refuse sexual acts within marriage
Article (Constitution)	21	Right to life, dignity, and personal liberty	Violated by legal tolerance of forced sex within marriage

3. COMPARATIVE JURISPRUDENCE

Marital Rape Laws in Other Jurisdictions (UK, USA, Australia, South Africa)

The international trend in legal jurisprudence has increasingly shifted towards the recognition of marital rape as a criminal offence, discrediting the archaic assumption that marriage means irrevocable sexual consent. The United Kingdom, the United States, Australia, and South Africa have all amended their legal frameworks to criminalize marital rape, thus upholding the values of bodily autonomy, gender equality, and human dignity.

In the UK, marital rape has been lawfully established as a crime from the early 1990s. Rape under the Sexual Offences Act 2003 refers to non-consensual penetration and has consent at its core. The law distinguishes neither between married and unmarried persons nor based on the presumption of implied consent in marriage; thus, the husband can be prosecuted for raping his wife. The Act holds that consent is continuous and willing, thus eradicating the assumption of presumed marital consent.¹

In the United States, criminal law is established at the state level, though almost all states have abolished the marital exemption for rape. Title 18, Section 2241 of the U.S. Code, for example, codifies the crime of aggravated sexual abuse, including crimes perpetrated against a spouse. Though enforcement and penalty can differ by jurisdiction, the essential law in most states remains that consent is necessary in all sexual relations, including marriage. Some states have also passed individual legislation that declares marital rape a distinct offence or subsumes it under broad rape legislation.

Australia, as in the United States, follows a state-based system of law. Marital rape has been established as a criminal offence in all Australian states and territories since the 1990s. For example, Section 61I of the Crimes Act 1900 (New South Wales) criminalises sexual assault

with no exception made for marital status. Consent is now mandatory in all cases, and the concept of conjugal rights is no longer available as a defense in prosecutions for rape. This change indicates the nation's wider embrace of gender equality and safety from domestic and sexual violence.

In South Africa, the criminalization of marital rape is solidly anchored in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007. The legislation categorizes non-consensual sex as rape, irrespective of the parties' relationship. South Africa's advanced legal system is guided by its constitutional commitment to human rights, gender equality, and protection from violence. The statute acknowledges that consent has to be obvious and ongoing, and marital status does not shield an offender from prosecution.⁹

The comparative law approach evidently reflects a worldwide trend towards classifying all instances of rape as serious offences, regardless of the marital status of the victim or the perpetrator. These jurisdictions have accepted reforms affirming the standards of consent, autonomy, and legal equality, providing a progressive model for nations such as India.

Country	Relevant Law	Status of Marital Rape
United Kingdom	Sexual Offences Act 2003	Criminalized; no exception for marriage
United States	Title 18 § 2241 U.S. Code (varies by state)	Criminalized in most states
Australia	Crimes Act 1900 (NSW) Section 61I and similar state-level laws	Criminalized in all states and territories
South Africa	Criminal Law (Sexual Offences and Related Matters) Amendment Act 2007	Criminalized; marital status irrelevant

4. IMPACT ON WOMEN'S RIGHTS AND HUMAN DIGNITY

Psychological and Physical Consequences

Marital rape causes deep and long-lasting psychological and physical damage to victims. It is sexual violence against the body, invading bodily integrity, and removing the person from

⁹ Oyebanke Yebisi and Victoria Balogun, "MARITAL RAPE: A TALE OF TWO LEGAL SYSTEMS" *Academy of Science of South Africa*, 2017 available at: https://www.researchgate.net/publication/354774564_MARITAL_RAPE_A_TALE_OF_TWO_LEGAL_SYSTEMS (last visited April 11, 2025).

autonomy and agency in the most intimate arena of marriage. Victims develop post-traumatic stress disorder (PTSD), depression, anxiety, and suicidal thoughts. The feeling of betrayal by someone they trusted adds to the trauma, and it becomes harder for them to recover. Physically, victims can experience injury to the reproductive organs, bruises, internal hemorrhage, and sexually transmitted diseases, particularly if the act is accompanied by coercion or physical violence.¹

Breachment of Fundamental Rights

Marital rape is a serious infringement of a number of basic rights under the Indian Constitution. Article 14 guarantees equality before the law and equal protection of the laws. Exempting husbands from rape is an unjustified distinction between married and unmarried women, which offends the concept of equality. Article 15(1) outlaws discrimination on the basis of sex, and by failing to acknowledge marital rape, the law discriminates against women in marriage indirectly. Article 21 assures the right to life and personal liberty, encompassing the right to live with dignity and decide on one's body and sexuality. The marital rape exception to Exception 2 to Section 63 of the BNS degrades the dignity, bodily integrity, and autonomy of women, contrary to the intent of these constitutional safeguards.

The Human Rights Approach

Internationally, India's marital rape exception is in contravention to a number of global conventions and treaties. Article 5 of the Universal Declaration of Human Rights (UDHR) forbids cruel, inhuman, or degrading treatment. Marital rape, as a matter of definition, is within this provision. In addition, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), to which India is a party, requires member states to eradicate discrimination in all aspects, including family life and sexual relations. The International Covenant on Civil and Political Rights (ICCPR) provides for the right to liberty and security of the person. India's inability to criminalize marital rape is an indication of a breach of these global commitments, undermining its international reputation on human rights and gender equality.¹⁰

¹⁰ Dasari Nireekshana, "Marital Rape in India: Criminalization vs. Legal Justification Legal Research And Analysis % - Legal Research And Analysis" Legal Research and Analysis, 2025 *available at*: <https://legalresearchandanalysis.com/marital-rape-in-india-criminalization-vs-legal-justification/> (last visited April 11, 2025).

5. ARGUMENTS FOR AND AGAINST CRIMINALIZING MARITAL RAPE

Arguments in Favor of Recognition

There are several reasons why marital rape should be criminalized in India. The foremost is that consent is a basic element of every sexual encounter, whether or not one is married. Marriage should not and cannot be construed as automatic consent to intercourse. Acknowledging marital rape would bring Indian law into conformity with the constitutional principles of equality, dignity, and freedom. Secondly, the current legal provision under the Bharatiya Nyaya Sanhita, 2023, namely Exception 2 to Section 63, is based on colonial-era patriarchal assumptions that no longer hold in a modern democratic society. Thirdly, criminalizing marital rape would assist in changing societal attitudes, enable women to come forward and report abuse, and enhance access to justice and support services. It would also serve India's commitments under international human rights treaties like CEDAW, UDHR, and ICCPR.¹

Common Counterarguments and Critical Analysis

The opponents of criminalization of marital rape generally retort that it would result in the disruption of the family system and abuse of law by revengeful spouses. Another point is that it is not easy to prove rape in marriage because the relationship is private in nature. Critics also argue that there are provisions under domestic violence laws that are sufficient to give remedies to women. But a critical examination exposes the frailty of these counterarguments. Compromising individual rights in the name of protecting family harmony goes against fundamental human values. Fears of abuse can be met with judicial protection, as in other criminal cases. The Protection of Women from Domestic Violence Act, 2005 mainly offers civil remedies and does not criminalize marital rape, so it falls short of proper redress. Finally, the complexity of proof is not a ground to deny recognition; instead, it requires sensitive legal procedures and proper implementation.

Case laws

The *Sakshi v. Union of India*¹¹ case is a landmark in the discussion of marital violations. The Supreme Court of India recognized the wide lacunae in the prevalent legal framework regarding marital violence and sexual crimes under marriage in this case. The Court highlighted the imperative for a changed approach and suggested legislative reforms to deal

¹¹ *Sakshi v. Union of India* (AIR 2004 SC 3566)

with these issues. Whereas the judgment itself did not go so far as to specifically consider marital rape, it was used to pave the way for argument about the requirement for further protection of women under marriage, building the groundwork for future court challenges on this aspect.

Conversely, *T. Sareetha v. T. Venkata Subbaiah*¹ approached marital responsibilities differently. Here the Andhra Pradesh High Court held Section 9 of the Hindu Marriage Act (HMA) to be unconstitutional. Section 9 of the HMA concerns the restitution of conjugal rights (RCR), according to which one should cohabit with the other if the latter requests it. The Court held that the enforcement of such a provision is against human dignity since it forced an individual to cohabit with their spouse unwillingly, violating their personal freedom and identity. This ruling criticized the legal enforcement of conjugal cohabitation, highlighting how it destroys individual autonomy and results in forced conjugal rights, which can enable marital rape.

In the same vein, in *Saroj Rani v. Sudarshan Kumar Chadha*¹², the Supreme Court upheld the constitutional validity of RCR. This decision, in effect, legitimized the concept of forcing a spouse to cohabit as a way of saving the marriage. Although the aim was to maintain family cohesion, the Court did not consider the harm that such legal compulsions could do, especially to women. The coercive cohabitation in the name of maintaining marriage is also a cause for concern about marital rape, as it overlooks the potential of sexual violence within marriage and therefore violates the fundamental rights of women. This judicial practice of enforcing cohabitation can be regarded as an indirect validation of a husband's right to insist on sex, even when the wife is not willing, which creates major issues of personal liberty and dignity.

The *Bhikaji v. Rukhmabai* case¹ complicates the story of marital obligations further by pointing to the possibility of coerced sexual relations within marriage. This case points to the historical context in which women were placed under legal and social compulsion to perform marital obligations irrespective of consent. The judicial system, in these instances, acts as an "invisible hand" capable of contributing indirectly to marital rape by giving more importance to the marriage institution rather than individual rights and freedoms. The judicial system, by imposing cohabitation, actually facilitates situations where a woman's will is ignored, further

¹² *Saroj Rani v. Sudarshan Kumar Chadha* (1984 AIR 1562)

cementing gender discrimination and destroying the concept of marital consent.

6. LAW COMMISSION REPORTS AND GOVERNMENT STAND

Recommendations of Law Commissions

The Law Commission of India, as a statutory body entrusted with the task of legal reform, has treated the issue of marital rape in some of its reports. Significantly, the 172nd Law Commission Report (2000) examined laws governing rape and sexual offences. While the report had suggested several progressive reforms, such as substituting the word "rape" with "sexual assault" and a gender-neutral code, it did not suggest criminalizing marital rape. It noted the intricacy of such a reform in the Indian socio-legal scenario with concern at its possible misuse and issues related to evidence. But legal experts later faulted this stand for not being able to maintain constitutional principles and for disregarding the developing international legal principles.¹³

On the other hand, the Justice Verma Committee Report (2013), which was formed after the 2012 Delhi gang-rape case, emphatically suggested the abolition of Exception 2 to Section 63 of the Bharatiya Nyaya Sanhita. The committee categorically believed that exclusion of marital rape from the definition of rape was inconsistent with the bodily integrity, dignity, and equality of women. The committee urged a gender-equitable legal system and asserted that marriage could not be used as a defense for sexual brutality. Though the report is liberal in its approach, its suggestions have not yet been implemented to the maximum extent, particularly where marital rape is concerned.

Parliamentary Debates and Policy Statements

Indian parliamentary debates have evidenced a hesitant and sometimes conservative policy towards criminalizing marital rape. Various Members of Parliament and members of women's rights groups have brought the matter up over the years, seeking legislative intervention. Successive administrations, however, have indicated misgivings based on the grounds of marital sanctity, risk of abuse of law, and the challenge of differentiating between consensual and non-consensual sexual activity within wedlock. The Home Ministry has, in various statements, asserted that the current legal regime, under which the Protection of Women from

¹³ "Cabinet approves Bill to amend law on rape," PRS Legislative Research *available at*: <https://prsindia.org/theprsblog/cabinet-approves-bill-to-amend-law-on-rape?page=58&per-page=1> (last visited April 11, 2025).

Domestic Violence Act, 2005, is included, adequately covers violence against women in the home. However, this stance ignores the lack of criminal responsibility for forced sexual intercourse in marriage, an important lacuna in the law of protection. Role of NGOs and Civil Society¹

Civil society groups and non-governmental organizations have also contributed enormously towards raising awareness about marital rape and pushing for legal change. Such organizations include the Human Rights Law Network, Amnesty International India, and the Centre for Social Research, which have been active in demanding the abolition of the marital rape exception within Indian criminal law. These organizations have carried out awareness programs, legal literacy campaigns, and policy advocacy to change public attitudes and shape legislators. Their efforts demonstrate how the denial of legal recognition to marital rape reinforces structural violence against women and erodes India's commitment to gender justice. These initiatives have also led to submissions to international human rights venues, calling for India to align its national legislations with global conventions like CEDAW and the Universal Declaration of Human Rights.

7. CONCLUSION

The case of marital rape in India continues to mirror the endemic difficulties of bringing personal laws, social norms, and constitutional ideals into line with contemporary human rights norms. Although marital rape is a species of non-consensual sexual assault, it continues to fall outside the jurisdiction of the criminal law in Exception 2 to Section 63 of the Bharatiya Nyaya Sanhita, upholding the medieval belief that a wife, by marriage, voluntarily agrees to sexual intercourse. This legal exemption not only goes against the essential rights protected by Articles 14, 19, and 21 of the Constitution but also against the concept of bodily autonomy and dignity found in both domestic and international laws.

The doctrinal analysis conducted in this research has revealed that the existing legal regime does not extend equal protection to married women, and thus there is a legal vacuum that compromises their access to justice. Although the Protection of Women from Domestic Violence Act, 2005 offers civil remedies for sexual abuse in marriage, it does not entail criminal liability, and hence its deterrent effect is curtailed. The ineffective criminalization of marital rape thus validates violence within marriage and takes away victims from the legal avenues for real remedies.

Comparative jurisprudence of jurisdictions like the United Kingdom, the United States, Australia, and South Africa shows an evolving trend toward criminalizing marital rape as a punishable offence. These nations have amended their legislation to state categorically that marriage does not involve permanent consent and that individual freedom and consent should be the essential elements in any sexual relationship. India's persistent refusal to take the lead is not only bringing it into conflict with global human rights norms but also bringing to center stage the power of patriarchal values in framing policy and legal discourse.

The physical and psychological trauma of marital rape significantly affects the mental health, reproductive rights, and well-being of women. Furthermore, refusing legal acknowledgment to marital rape sustains institutionalized gender discrimination and violates a woman's intrinsic human rights. The main arguments against criminalization, like possible abuse of law and privacy in marriage, are based on faulty empirical assumptions and stem from regressive attitudes about women's autonomy and agency.

In summary, the criminalization of marital rape is not only a matter of law; it is a matter of constitution and morals. The law needs to transform to ensure safety for everyone on an equal footing, be they married or not, and respect the right to live with dignity and in fearlessness. Marital rape has to be defined as a crime in India not only to harmonize international trends but also to provide justice, equality, and human dignity to every woman.

Recommendations

In light of the doctrinal analysis and the critical gaps identified in the existing legal framework, the following recommendations are proposed to address the urgent need for the legal recognition of marital rape in India:

1. The initial and primary step is to repeal Section 63 of the Bharatiya Nyaya Sanhita, which presently grants legal immunity to husbands for non-consensual sexual intercourse with their wives. Such an exception is in conflict with constitutional rights and has to be done away with to provide equality before the law.
2. Passage of Gender-Sensitive Laws: Certain provisions defining and penalizing marital rape need to be brought in through thorough, gender-sensitive legislation. Such laws must define marital rape clearly, incorporate consent as a core requirement, and have the right punishments and procedural protection.

3. **Training of Judiciary and Law Enforcement:** Policemen, prosecutors, and judges must be sensitized and trained to handle cases of marital rape with empathy and professionalism. Special focus has to be given to handling victims sensitively, protecting their safety, and preventing secondary victimization.
4. **Victim Support Mechanisms:** Create special support systems like crisis centers, legal aid cells, counseling services, and rehabilitation programs to ensure comprehensive care to victims of marital rape. Access to mental health services and medical facilities is also important.
5. **Awareness and Social Reform:** The government and civil society should work together to alter public attitudes toward marital rape through awareness campaigns, educational programs, and community mobilization and thereby counteract the normalization of violence in marriage.

These recommendations aim to build a legal and social environment that affirms the autonomy, dignity, and rights of all women, irrespective of their marital status.

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